

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 927 of 1999****For Approval and Signature:****HONOURABLE MR.JUSTICE Z.K.SAIYED**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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STATE OF GUJARAT - Appellant(s)**Versus****KIRANSINH JASWANTSINH ANITIYA CANTEEN SUPERVISOR & 1 -
Opponent(s)**

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Appearance :

MS DARSHNA PANDIT, APP, for Appellant(s) : 1,

NOTICE SERVED for Opponent(s) : 1 - 2.

MR BS PATEL for Opponent(s) : 2,

MRS RANJAN B PATEL for Opponent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE Z.K.SAIYED**Date : 20/12/2007****ORAL JUDGMENT**

1. The present acquittal Appeal has been filed by
the State, under Section 378 Cr. P.C., against
the Judgment and order dated 30.4.1999, rendered

in Criminal Case No.1185 of 1993 by the learned Judicial Magistrate, First Class, Dediapada. The said case was registered against the present respondents for the offence under Section 7 & 16 of the Prevention of Food Adulteration Act (for short "PFA Act") in the Court of learned JMFC, Dediapada. The said Judgment of the trial Court has been challenged by the State on the ground that the Judgment and order passed by learned Magistrate is against the law and evidence on record.

2. According to the prosecution case that on 13.9.1993 at about 13.30 hrs. the complainant - Food Inspector Shri Mohmed Juber Gulammustufa Shaikh, along with his Assistant Shri H.B.Parmar, visited the canteen, namely, "Petrofils Co-Op. Ltd." run by contractor Shri Mohanbhai K. Patel, who was not present at the time of visit of Food Inspector and in absence of said contractor, Supervisor Kiransinh Jashvantsinh Anitaya was running the canteen. In the said canteen the Food Inspector has checked every articles like turmeric powder, rice, wheat Ata, Besan, etc., which were lying in the Store Room. The Food Inspector purchased 600 grams Turmeric Powder from the bag of about 3 kg. for the purpose of analysis. The said sample of Turmeric Powder was purchased in presence of Panchas after paying Rs.30/- to the Canteen Supervisor and has taken signature on the Bill.

The said sample of Turmeric Powder was sealed in a cleaned bottle in presence of Panch witness as per the provisions of the PFA Rules and then the same was sent to the Public Analyst for Report. Upon receipt of the Report from the Public Analyst it was found that the sample was adulterated and, therefore, complaint was filed against the present respondents - accused. Thereafter the charge was framed against the respondents - accused and accused came to be tried.

3. At the conclusion of trial and after appreciating the oral as well as documentary evidence, the learned Magistrate vide impugned Judgment, acquitted the respondent - accused.

4. Learned A.P.P. Ms. Darshana Pandit, appearing on behalf of the appellant - State has contended that the Judgment and order of acquittal is contrary to law and evidence on record and is not proper and is against the provision of law. She has also contended that the learned trial Judge has failed to appreciate that the sample of Turmeric Powder was found to be adulterated and was below the standard quality as per the Rules of Prevention of Food Adulteration Rules, 1954. She has also contended that the trial Court has failed to appreciate the Report of Central Food Laboratory. She has also contended

that the said sample was taken in presence of panchas. From the oral as well as documentary evidence the appellant has established its case beyond reasonable doubt, yet the trial Court has failed to appreciate oral as well as documentary evidence and acquitted the respondents - accused. She has also contended that the order of the trial Court is against the provisions of law and the trial Court has failed to consider the expert's evidence which is produced on the record. From the Report of the Public Analyst it is established that the act of the present respondent is covered within the provision of the PFA Act.

5. Learned Advocate Mr. Chirag B. Patel, appearing for the respondents - accused has contended that the prosecution has failed to establish that they have followed Rule 14 of the PFA Rules. He has also contended that the sample which was sealed, was not as per the direction contained in the Rules. He has contended that the said Turmeric Powder was not for sale. He has contended that from the oral evidence of the witnesses it is established that the said turmeric powder was lying in a Store Room along with other articles and the same was used for preparing the food in the canteen. He has also contended that when the turmeric powder was not for sale then the respondent - accused cannot be held liable for the commission of offence. He

has also contended that the Rule : 14 is a mandatory and it is required to be followed by the prosecution. Mr. Patel has relied upon the decision of this Court (Coram : C.K.Buch, J.) rendered in Criminal Appeal No.104 of 1991, decided on 23.3.1998. In my view, the said decision is straightway applicable to the facts of the present case. It also appears that the Rule 14 is mandatory and it is the duty of the prosecution to prove beyond reasonable doubt that all ingredients or provisions are to be proved as per law and especially the provisions which are mandatory in nature have got to be proved beyond reasonable doubt.

6. I have gone through the evidence produced before me. It appears from the oral as well as documentary evidence that the Turmeric Powder was not for sale. The canteen is not a shop from where the person can purchase food articles like Turmeric powder, rice, etc. I have also gone through the Judgment and order passed by the trial Court. The trial Court has discussed each and every aspect of the matter as also the legal submission. The trial Court has also relied upon the decision of the Hon'ble Apex Court as well as this Court. In view of the observation made by the trial Court, in my view, the prosecution has failed to establish the case against the respondents - accused beyond reasonable doubt. In the facts of the case I am in complete

agreement with the reasons assigned by the trial Court.

7. It is settled legal position that in acquittal Appeal, the Appellate Court is not required to re-write the Judgment or to give fresh reasonings when the Appellate Court is in agreement with the reasons assigned by the trial Court acquitting the accused. In the instant case, this Court is in full agreement with the reasons given and findings recorded by the trial Court while acquitting the respondents - accused and adopting the said reasons and for the reasons aforesaid, in my view, the impugned Judgment is just, legal and proper and requires no interference by this Court at this stage. Hence, this Appeal requires to be dismissed.

8. In the result, the Appeal is hereby dismissed. The impugned Judgment and order dated 30.4.1999 passed by the learned J.M.F.C., Dediya pada in Criminal Case No. 1185 of 1993, acquitting the respondents - accused, is hereby confirmed.

(Z.K.SAIYED, J.)

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